

Scottish law

Many aspects of the law relating to Wills and inheritance are different in Scotland from that in the rest of the UK. This fact sheet has been produced for guidance only. Please seek advice from a solicitor who will be able to advise you fully of the differences.

Executors

In Scotland, executors appointed by your Will are called executors-nominate.

For a person who dies intestate (without a valid Will), a close relative of the deceased must apply to the Sheriff Court by Initial Writ to be appointed as executor-dative, and this person will wind up the estate in accordance with the intestacy rules in the Succession (Scotland) Act 1964.

Confirmation

All executors, whether nominate or dative, have to be officially approved by the Sheriff Court before they can start collecting in the estate. This court approval is termed Confirmation because the Sheriff confirms the authority of the people who have been appointed by the Will, or under the intestacy procedure.

Having your Will witnessed

A Will in Scotland is valid if it is signed and witnessed. It is not recommended to rely on either a handwritten Will or an unwitnessed Will, as these can be problematic. A witnessed Will is preferable as it is presumed to be genuine unless anyone can challenge it successfully. In the case of a witnessed Will, one witness is sufficient. When a Will is more than one sheet of paper, every page must be signed at the foot by the testator. The last page is signed by a witness who should be independent and not a beneficiary of the Will.

Marriage

Under Scottish law, getting married does not make an existing Will invalid. Therefore, when you get married you should make a new Will to provide properly for your husband or wife. Unless you do so, your husband or wife will not benefit under your Will, although he or she can claim certain legal rights but in many cases they may be inadequate for their needs.

Cohabiting

There are at present no implicit rights for cohabiting partners under Scottish law so it is essential that proper provision is made for them.

Scottish law continued

Divorce

In Scotland, it is essential that new Wills are made after divorce.

Children

In addition to marriage, separation, divorce and re-marriage, the birth of a child is an occasion when it is advisable to change a Will. There is also a presumption, which can be invoked under Scottish law, that the birth of a child can revoke an earlier Will if that Will does not provide for the child.

Prior rights

Under intestacy, a spouse has certain prior rights to benefit from the deceased's estate, including elements of both heritable and moveable property. These rights do not arise if there is a valid Will.

Legal rights

Children and spouses have fixed legal rights to a share of a person's estate, even if there is a valid Will and despite what their Will says. Their legal rights, or 'legitim', are to a fixed share of moveable property, but not of heritable property. They arise on intestacy or as an alternative to any provision in the Will. They may be accepted or, as is often the case, renounced.

Note: The law governing the distribution of estates (both testate and intestate) in Scotland is the Succession (Scotland) Act 1964.

The law governing the signing requirements of a valid Will is the Requirements of Writing (Scotland) Act 1995.